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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-3379-FN]

Medicare and Medicaid Programs; Continued Approval of the Accreditation Commission for Health Care Accreditation Program.

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Final notice.

SUMMARY: This final notice announces our decision to approve the Accreditation Commission for Health Care (ACHC) for continued recognition as a national accrediting organization for hospices that wish to participate in the Medicare or Medicaid programs. A hospice that participates in Medicaid must also meet the Medicare conditions for participation.

DATES: This final notice is effective November 27, 2019 through November 27, 2025.

FOR FURTHER INFORMATION CONTACT:

Lillian Williams, (410) 786-8636, or Joann Fitzell, (410) 786-4280.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a hospice provided certain requirements are met by the hospice. Section 1861(dd) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as a hospice. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 418 specify the conditions that a hospice must meet in order to

participate in the Medicare program, the scope of covered services and the conditions for Medicare payment for hospices.

Generally, to enter into an agreement, a hospice must first be certified as complying with the conditions set forth in part 418 and recommended to the Center for Medicare & Medicaid (CMS) for participation by a state survey agency. Thereafter, the hospice is subject to periodic surveys by a state survey agency to determine whether it continues to meet these conditions. However, there is an alternative to certification surveys by state agencies. Accreditation by a nationally recognized Medicare accreditation program approved by CMS may substitute for both initial and ongoing state review.

Section 1865(a)(1) of the Act provides that, if the Secretary of the Department of Health and Human Services (the Secretary) finds that accreditation of a provider entity by an approved national accrediting organization meets or exceeds all applicable Medicare conditions, CMS may treat the provider entity as having met those conditions, that is, may “deem” the provider entity to be in compliance. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

If an accrediting organization is recognized by the Secretary as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting organization’s approved program may be deemed to meet the Medicare conditions. A national accrediting organization applying for CMS approval of their accreditation program under 42 CFR part 488, subpart A, must provide CMS with reasonable assurance that the accrediting organization requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of

accrediting organizations are set forth at §488.5. Section 488.5(e)(2)(i) requires accrediting organizations to reapply for continued approval of its Medicare accreditation program every 6 years or sooner as determined by CMS. The Accreditation Commission for Health Care (ACHC'S) term of approval as a recognized accreditation program for its hospice accreditation program expires November 27, 2019.

II. Application Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for CMS-approval of an accreditation program is conducted in a timely manner. The Act provides us 210 days after the date of receipt of a complete application to publish notice in the **Federal Register** of approval or denial of the application. The Act also states within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accrediting body making the request, describes the request, and provides no less than a 30-day public comment period.

III. Provisions of the Proposed Notice

In the June 28, 2019 **Federal Register** (84 FR 31068), we published a proposed notice announcing ACHC's request for continued approval of its Medicare hospice accreditation program. In the June 28, 2019 proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and in our regulations at §488.5, we conducted a review of ACHC's Medicare hospice accreditation application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- An onsite administrative review of ACHC's: (1) Corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training,

monitoring, and evaluation of its hospice surveyors; (4) ability to investigate and respond appropriately to complaints against accredited hospices; and (5) survey review and decision-making process for accreditation.

- The comparison of ACHC's Medicare hospice accreditation program standards to CMS's current Medicare hospice conditions of participation.

- A documentation review of ACHC's survey process to--

- ++ Determine the composition of the survey team, surveyor qualifications, and ACHC's ability to provide continuing surveyor training.

- ++ Compare ACHC's processes to those we require of state survey agencies, including periodic resurvey and the ability to investigate and respond appropriately to complaints against accredited hospices.

- ++ Evaluate ACHC's procedures for monitoring hospices it has found to be out of compliance with ACHC's program requirements. (This pertains only to monitoring procedures when ACHC identifies non-compliance. If noncompliance is identified by a state survey agency through a validation survey, the state survey agency monitors corrections as specified at §488.9(c))

- ++ Assess ACHC's ability to report deficiencies to the surveyed hospice and respond to the hospice's plan of correction in a timely manner.

- ++ Establish ACHC's ability to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

- ++ Determine the adequacy of ACHC's staff and other resources.

- ++ Confirm ACHC's ability to provide adequate funding for performing required

surveys.

++ Confirm ACHC's policies with respect to surveys being unannounced.

++ ACHC's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

++ Obtain ACHC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act, the June 28, 2019 proposed notice also solicited public comments regarding whether ACHC's requirements met or exceeded the Medicare CoPs for hospices. No comments were received in response to the proposed notice.

IV. Provisions of the Final Notice

A. Differences Between ACHC's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements

We compared ACHC's hospice accreditation requirements and survey process with the Medicare CoPs of part 418, and the survey and certification process requirements of parts 488 and 489. Our review and evaluation of ACHC's hospice application, which were conducted as described in section III of this final notice, yielded the following areas where, as of the date of this notice, ACHC has completed revising its standards and certification processes in order to meet the requirements at:

- §418.56(c)(2), to address the requirement the frequency of services necessary to meet the specific patient and family needs.

- §418.110(c)(1), to require an inpatient hospice to address real or potential threats to the health and safety of the patients, others, and property.

- §418.110(d)(1)(i), to address the requirement that hospice must meet applicable provisions and must proceed in accordance with the Life Safety Code (National Fire Protection Association (NFPA) 101 and Tentative Interim amendments TIA 12-1, TIA 12-2, TIA 12-3 and TIA 12-4.)

- §418.110(d)(5), to address the requirement when a sprinkler system is shut down for more than 10 hours.

- §418.110(d)(5)(i), to address the requirement to evacuate the building or portion of the building affected by the system outage until the system is back in service.

- §418.110 (d)(5)(ii), to address the requirement to establish a fire watch until the system is back in service.

- §418.110(d)(6), to require both existing and new buildings to have an outside window or door in every sleeping room and, for any building constructed after July 5, 2016, to require that the sill height must not exceed 36 inches above the floor..

- §418.110(e), to address the requirement that except as otherwise provided in this section, the hospice must meet the applicable provisions and must proceed in accordance with the Health Care Facilities Code (NFPA 99 and Tentative Interim Amendments TIA 12-2, TIA 12-3, TIA 12-4, TIA 12-5 and TIA 12-6).

- §418.110 (e)(1), to address the requirement that Chapters 7, 8, 12, and 13 of the adopted Health Care Facilities Code do not apply to a hospice.

- §418.110 (e)(2), to address the requirement that if application of the Health Care

Facilities Code required under paragraph (e) of this section would result in unreasonable hardship for hospice, CMS may waive specific provisions of the Health Care Facilities Code, but only if the waiver does not adversely affect the health and safety of patients.

- §418.110 (q) through §418.110 (q)(1)(xi), address the requirement that the standards incorporated by reference in this section are approved for incorporation by reference by the Director of the Office of the **Federal Register** in accordance with 5 U.S.C 552(a) and 1 CFR part 51.

B. Term of Approval

Based on our review and observations described in section III of this final notice, we approve ACHC as a national accreditation organization for hospices that request participation in the Medicare program, effective November 27, 2019 through November 27, 2025.

V. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35 et seq.).

Dated: November 5, 2019.

Seema Verma,

Administrator,

Centers for Medicare & Medicaid Services.